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LIST OF CASES CITED

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

DETROIT UNITED RAILWAY, Appellant, vs. CITY OF DETROIT, et. al., Appellees.	No. 492.

MOTION TO DISMISS, AFFIRM OR ADVANCE

The appellee, the City of Detroit, comes and moves:

(1st) To dismiss the appeal in this cause for the reason that no Federal question is involved in the case which would authorize or justify the beginning of said suit in the United States Court or this appeal.

(2nd) In case the foregoing motion be denied said appellee moves to affirm the judgment of the District Court of the United States for the Eastern District of Michigan, for the reasons that it is manifest that the Court below had no jurisdiction and that the appeal is taken for vexatious reasons only and not because of merit in the questions, and because the questions involved are so frivolous as not to need further argument.

(3rd) In case both of the foregoing motions be denied, appellee moves to advance the cause and set the same for hearing at the earliest date which suits the convenience of the Court for the reasons stated in the affidavits of James Couzens and Joseph S. Goodwin attached hereto, and because of the great delay otherwise made necessary in the ordinary course of litigation in this Court and because great public interest imperatively needed public works and large sums are involved.

Clarence E. Wilcox,
Alfred Lucking,
Counsel for said Appellee.

A BRIEF STATEMENT OF THE FACTS:

The plaintiff, being the owner of the existing street railways in Detroit, filed this bill of complaint to prevent the City of Detroit from carrying into effect the expressed purpose of a vast majority of the citizens, to acquire additional lines of their own, including some streets where plaintiff is running cars but has no franchise. Detroit had more than doubled in population within the last ten years and the utter inability of the company to cope with the existing situation became so apparent and the inconveniences to citizens so great that the City Administration, headed by Mr. James Couzens, as Mayor submitted a proposal to the electors, as required by the Constitution and the law, to issue bonds for $15,000,000 and authorize the City to acquire a municipal system on certain streets, covered by the proposal.

After an extended and heated discussion, participated in by all of the newspapers, and scores of public speakers, in which every phase of the proposition was debated from every angle, the proposal was carried by a vote of 88,585 to 50,776.

No sooner was the vote announced than this bill was filed by the street railway company to block the work. In addition thereto, five other trivial, vexatious suits relating to the same general subject matter were started by the plaintiff in the state and federal courts as shown by the affidavit of Mr. Couzens attached. One of these suits seeks to declare the election void because the paper on which the ballots were printed was too thin. The others are all based on technicalities as shown in the attached affidavits of Mr. Couzens. The representatives of the Railway Company stated in the public debates before the election that if the ordinance carried, the Railway Company would start suits to enjoin the work and prevent the sale of the bonds.

In 1910 the franchise of the plaintiff expired on the chief trunk lines and notwithstanding the express language to that effect, the plaintiff in defiance of the plain written word, claimed to have perpetual franchises in those streets. Fort Street was made a test case and the Supreme Court of Michigan held (and this was confirmed by the Supreme Court of the United States) that plaintiff's franchises having expired it had no further rights upon the streets and that it must vacate upon notice of 90 days given by the City Council. (See the Decree R. p. 43).

City of Detroit vs. Detroit United Railway, 172 Mich. 136;

Detroit United Ry. vs. Detroit, 229 U. S. 39.

This decree was made February 28th, 1913, and affirmed by the Supreme Court of the United States, May 26th, 1913.

Following that case a day-to-day arrangement was made between the Common Council and the Railroad Company fixing fares, revocable at the will of either party (R. pp. 44-46).

The Michigan Constitution of 1908 forbids the grant of any rights in the streets to a street railway company

> "which is not subject to revocation at the will of the City or Village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors." (Constitution, Article 8, Section 25).

Hence the Common Council gave only a revocable day to day license; and such has been the practice in Detroit on all streets where any new work has been done (R. pp. 23-26).

The great growth of Detroit rendered more mileage imperative and the Railway Company protested it could not get the money—at any rate it did not give the service, hence the City Administration formulated this plan, and obtained from the people the needed authority and money.

Notwithstanding every obstacle plaintiff has thrown in the way, the City's progress with its plan has been steady and marked. Many miles of the work on a number of the streets have been started and a large amount of work done (for details see the affidavit of Mr. Goodwin, General Manager of the Municipal Street Railway, attached hereto). Also notwithstanding the frantic and vexatious attempts of the plaintiff and its

attorneys to discredit the bonds and prevent their sale, more than one and one-half millions of these bonds have been absorbed by the general public (Affidavit of Mr. Couzens attached).

The Detroit United Railway has been very prosperous, paying 8% dividends on its watered Capital Stock—besides acquiring largely out of the Detroit earnings a vast interurban system and acquiring a large surplus (see affidavit of Mr. Couzens).

As to the rights of the City and the Railway Company upon the other (than Fort Street) streets where franchises have expired suit was brought in the State Courts on Aug. 27, 1918, by the City—to determine such rights and the case is now pending in the Supreme Court of Michigan (See affidavit of Mr. Couzens, pp. 39-40).

The Bill of Complaint in substance alleges three grounds for relief:

(1st) That the Ordinnace was void and not properly approved, by the people because the voters were misled and the ordinance improperly submitted.

(2nd) That plaintiff has gained continuing rights in Fort Street and Woodward Avenue, since the decisions of the Supreme Courts of the United States and Michigan in the Fort Street case.

(3rd) That the City officials were attempting in bad faith to threaten to throw plaintiff off Fort Street and Woodward Avenue with the real intent of compelling plaintiff to sell its property in said streets at an inadquate price.

We think the foregoing states the substance of plaintiff's grounds for relief although the bill of complaint is very long and very verbose and argumentative.

The defendant, City of Detroit, moved to dismiss the bill of complaint on two grounds:

First: That no Federal Question was shown to give the court jurisdiction, and,

Second: That there was no equity in the bill which entitled plaintiff to relief.

After argument Judge Tuttle held that he would take jurisdiction of the case not because any Federal question was really involved but because Plaintiff made a claim of one, apparently in good faith. The learned Judge then proceeded in an oral opipnion of great clearness and perspicacity to point out that there was no equity in the bill on its face (R. pp. 57-60).

ARGUMENT

I

POINTS ON THE MOTION TO DISMISS BECAUSE NO FEDERAL QUESTION IS INVOLVED

The Judge below, in his logical and illuminating opinion, which was delivered orally at the conclusion of the arguments, said:

> "As I view it, the most difficult question is the one as to whether or not a Federal Constitutional question is involved. In the light of the recent decisions, I reached the conclusion that it is my duty to take jurisdiction of the case but I do so on the theory that the Federal question is raised in good faith, and not because when such question is properly answered the bills show any invasion of constitutional rights" (R. p. 57).

The learned Judge gave plaintiff credit for good faith in starting this suit although he promptly decided every question raised by plaintiff's counsel adversely.

We submit the Court was too generous,—there could be no good faith (belief in the ground for federal jurisdiction) without at least a plausible ground for it. We argue that good faith is not enough to give jurisdiction, but there must be a real substantial question about which open minds could differ (193 U. S. 561-2). We submit that such is not this case—that the ground is frivolous and without substantial merit.

The *only* ground alleged for Federal jurisdiction is that the City officers were attempting to force the plain-

tiff to sell its property in certain streets at an inadequate price by threatening and pretending that the council would order plaintiff to remove from those streets and forcing the Company to sell at a low price rather than be compelled to take the property away with the attendant sacrifice. From this the inference is drawn that it was a taking or a threatened taking without due process (R. pp. 16, 19-20, Brief pp. 6, 9).

On this subject the bill alleges:

> *"The method of accomplishing said dishonest and unlawful purpose* the said mayor and some of his associates have many times openly and publicly stated to be (indeed, the intent and purpose to use this method is clearly indicated in the Mayor's message to the Common Council, Exhibit 5, and the sample ballot, Exhibit 6), that he will offer to plaintiff the sum of $40,000.00 for each mile of track (including overhead equipment) so to be taken, which sum is—as is well known to said mayor and his associate defendants—less than one-half of the fair value thereof, and that if such offer is not complied with, he and his associate defendant will order said tracks and equipment removed from said streets."

The bill sets forth the alleged threats, but the facts alleged do not bear out the charge of "threats to take at less than a fair price."

Mr. Couzens estimated the second-hand trackage and fixed equipment as worth $40,000 per mile. New lines were estimated at $70,000 per mile (R. pp. 52-53). Under the day-to-day agreements, the City and the Company agreed that the City should take over same at cost less depreciation (R. p. 25), and this trackage and equipment Mr. Couzens also estimated at $40,000 per mile

(R. p. 52). This price may be too low or too high but it was never stated, speaking as to either of the lines, to be anything but an *estimate*. It is thus plain that all plaintiff's alleged fears of an evil intent to take at less than fair value are fanciful—merely imagined for the sake of jurisdiction.

But all the counsel on both sides agreed that the ordinance as adopted did not in any manner authorize the acquisition of plaintiff's property in said streets (Fort Street and Woodward Avenue) and that in order to acquire such property by purchase, an agreement with the Company must be entered into, a definite and specific agreement fixing the price, and then submitting it for approval to the vote of the people *at another election* (R, pp. 59, 80).

The Charter of Detroit forbids the taking of any street railway property by purchase except under a specfic contract of purchase approved at an election by a three-fifths vote of the electorate (R. p. 18).

Likewise, the property could not be condemned except upon authority given by a three-fifths vote of the people (R. p. 18). The ordinance and election sought to be set aside in this case did neither of these.

All the counsel agreed before the Court below (R. pp. 59, 80) that none of the plaintiff's rails or other property in the streets could be taken by the City without another vote of the people, after a contract was arrived at with the assent of the plaintiff company.

Therefore, the pretended fear of the plaintiff that it was about to be forced by this ordinance and election into an agreement to sell at an inadequate price (which is the sole ground of Federal jurisdiction claimed in this case) is but a figment of the brain of counsel.

But Counsel for the plaintiff say to the City: "You may (in fact you intend to) force us to a low price below the true value, by threatening to order us to vacate the streets." If that were true, the city's right to order plaintiff off the streets is given or rather confirmed by the decisions of the Supreme Courts of Michigan and of the United States above cited. But such right does not arise out of and is not strengthened in any way by this ordinance or vote of the people. It can only be taken by orders of Common Council under the decree of the Court, and this order by the Common Council could still be passed and the plaintiff ordered off the streets even if the ordinance and election were declared void. This removal from Fort Street could have been commanded at any time since the decree in 1913 without any such ordinance as the one now attacked. There is no connection or relation between the election or ordinance sought to be set aside and the right to order the Company removed or the actual vote of ordering their removal.

The proposal to purchase plaintiff's lines on Fort Street and Woodward Avenue could not have been submitted in the ordinance in question because no agreement existed with the plaintiff and this was an essential preliminary. And likewise the purchase of plaintiff's lines in streets under the day to day agreements could not then have been submitted because such would require three essential preliminaries (1) that the City be first authorized to engage in municipal operation (2) that the City must actually engage in ownership and operation and (3) that the City must desire to operate a part of its system over such streets (R. p. 25). The way is cleared for all of these by the ordinance which was adopted. The acquisition of those lines from the plaintiff is still ahead of the City and when in due and orderly

course, that point is reached, it will be done according to law.

Thus, the only alleged ground for jurisdiction, viz: that the City or rather the defendant officials intended to order the railway company to remove its property off certain streets, or that the officials pretended that such steps would be taken, utterly fails because the ordinance affords no authority for such steps and it adds nothing to the power and right previously possessed by the City under the decisions of this Court and the Supreme Court of Michigan.

But, Counsel say, (brief p. 9) that the bill alleges it has rights in those streets, (Fort Street and Woodward Avenue) acquired subsequent to the decisions of the Supreme Courts of the United States and Michigan mentioned above, and that the Mayor and Common Council have decided upon a policy of forcing the plaintiff, without judicial action upon those acquired rights, to submit to having its property destroyed by removal and for the ultimate purpose of forcing plaintiff to dispose of its property at an inadequate price. (That such pretended after acquired rights cannot possibly have any existence is shown in this brief post pages 18-21.)

Whether plaintiff has any such after acquired right can be tried and determined when the Common Council attempts to order the plaintiff Railway off the said streets, but no such attempt has been made as yet and the first step will be the passage of a resolution in pursuance of the decree in the Fort Street case. When such attempt shall be made, if the plaintiff have such after acquired rights, the Court will protect them. If the City officials had such a plan in mind as alleged, their first step would be to either pass a resolution to remove or approach the plaintiff for a price, and that will

be time enough to litigate the question of after acquired rights. The question is not raised nor the alleged right questioned by the passage of this ordinance.

The City cannot force plaintiff into a contract of sale by physical force and if attempted the Courts will enjoin it,—but this ordinance has nothing to do with such a case.

The Ordinance is in no way essential to the City's right to eject plaintiff, which right existed before the ordinance in question was passed, and has not been fortified or strengthened in any way by such ordinance. The only effect of the passage of the ordinance is to provide the money (which might have been raised by taxation or other method) with which to build a system and to get the approval of the people to such system.

When the City comes to pass a resolution to eject or order plaintiff off the street the matter then comes at once to the Court under the decree already made in the Fort Street case for a Writ of Assistance, (See the Decree, R. p. 43) at which time plaintiff may set up its after acquired rights. And if the attempt were to eject from Woodward Avenue on the grounds that its franchise expired years ago, then the Court will protect any after acquired rights the Company may have.

In fact these questions are now being determined in the State Courts on a bill filed by the City to declare the respective rights in those streets (other than Fort Street) where franchises have expired.

We, Therefore, submit, from this very concise view of the jurisdictional question, that the alleged grounds for Federal Jurisdiction are frivolous and unsubstantial. Such a claim we submit could not be made in good faith because so manifestly absurd.

II.

ARGUMENT IN SUPPORT OF MOTION TO AFFIRM.

If the Court should be of opinion that a federal question is involved and should therefore deny the motion to dismiss, then we ask an affirmance of the decree below because the appeal is without merit and the questions on which decision of the case depends are so frivolous as to need no further argument.

In support of this motion we beg leave to refer the Court to the argument on motion to dismiss (Ante pp. 8-12). We also refer to the able opinion of the learned District Judge printed in the record on pages 57-60.

WE URGE THAT THE BILL ON ITS FACE DISCLOSES NO EQUITY.

Three Grounds for equitable relief are alleged:

(1) Bad faith of the City officials in that they intend to threaten to remove plaintiff from the two streets in question with no real intention of doing it but only to compel plaintiff to sell at less than the fair value.

(2) That plaintiff has acquired additional term rights in Fort Street and Woodward Avenue since the decisions of the Supreme Courts of the United States and of Michigan in the Fort Street case, by reason of certain acts of recognition on the part of the City officials and that the City officials threaten to take possession of those streets ignoring the after acquired rights and without judicial determination of them.

(3) That the ordinance was void because the voters were misled and the ordinance was improperly submitted.

Of these three in their order:

FIRST: Bad faith on the part of the City officials in that they intend to try to compel plaintiff to sell its property in the two streets at an inadequate price by threatening to order the property removed without any real intention of compelling its removal.

This has already been quite fully answered under the Motion to Dismiss (Ante pp. 7-12).

But in addition, we submit that malicious intent of the Mayor to drive a "hard bargain" cannot be ground

for depriving the City of its rights—its unquestioned rights.

This Court held that the City had the right after a franchise expired to order plaintiff to remove its property. Is it possible that the City can be deprived of this right because some official intends to say to the Company, "If you are not willing to accept a certain price, the City will pass a resolution requiring you to remove your property?"

Or must the City rigidly hold to one of two courses, either to pay *any* price the plaintiff chooses to ask or adopt the alternative of compelling evacuation.

On the other hand, the Railway Company has a "big stick" in the negotiations, in that the City does not want service interrupted while removing the old railway and the building of the new. May not the Company use that "stick" in making a sale? To say it cannot do so is absurd. There is nothing illegal in its making use of such argument. The same is true of the City. It may urge that the Company would much better yield something from its notions of full value rather than scrap the materials.

Each side has a strong argument, and each may advance it without violating any legal or equitable right of the other.

We submit with all earnestness, that the City's rights cannot be taken away or the City estopped or enjoined from exercising its legal rights by any so-called evil intentions or evil motives of its officials. It would seem unnecessary to cite authorities for so elementary a rule.

McCrary vs. U. S., 195 U. S. 37,

People vs. Gardner, 143 Mich. 104,

People vs. Gibbs, 106 Mich. 127,
McDowell vs. Fuller, 183 Mich. 639, 648.

Second: The second claim is that plaintiff has been given permanent rights to Fort Street and Woodward Avenue since the decisions of the Supreme Courts of the United States and Michigan in the Fort Street case by reason of certain acts of recognition on the part of City officials including the Common Council.

The principal acts of recognition (and in fact the only ones set forth so that the Court can judge of their import) are the "seven for a quarter" arrangement, the "day to day agreements" for new lines and the so-called "Kronk Ordinance."

The "seven for a quarter" arrangement contained this clause "no existing rights of either party shall be impaired or affected by this temporary arrangement, except as herein explicitly stated, and it is a day to day arrangement only" (R. p. 45).

And further, it contained this clause:

> "While this resolution shall be in force, the enforcement of the decree in the Fort Street case shall be suspended and immediately after repeal of this resolution, the present existing status as to such decree shall be restored, and the City may at once enforce the terms of said decree, the same as if this resolution were not passed" (R. p. 46).

Each of the agreements for new lines called "day to day agreements" contained even stronger language as follows:

> "The Railway Company by its acceptance hereof gets no term rights in said streets and the Council or people of Detroit at their pleasure or caprice

> may revoke the permit hereby granted and said Company will forthwith remove from the streets the property permitted to be placed therein under this grant. It is further agreed that the making and acceptance of this grant shall not be deemed to be a waiver of any of the rights of Detroit or of said Railway with reference to the construction, maintenance and operation of any lines of railway or street railway tracks now in said City and that each party hereby reserves all its rights whatever they may be, the same as if this grant had not been made or accepted."

And yet, in the face of these explicit stipulations of the most solemn nature, plantiff in breach of every legal and moral obligation claims in this suit that these acts conferred upon it continuing rights in the streets of Detroit (R. pp. 8, 5, 6).

Is it any wonder the City authorities regard it as dangerous to have any dealings with this Company, which treats the most solemn engagements as mere "scraps of paper."

The Kronk Ordinance contained this final clause:

> "This ordinance may be amended or repealed at any time by the Common Council. Unless so amended or repealed, it shall remain in force for one year" (R. p. 48).

The other acts and resolutions depended upon were stated in the most general terms in the bill (R. pp. 6, 7). The simplest rules of pleading require that if any dependence is placed upon the terms of such resolutions, that the terms (at least the important parts thereof) should be stated. But not only did the plaintiff fail to state the substance of any such acts or resolutions but it

positively refused to incorporate a sample of them in the record before the Court below (R. p. 65). In the absence of plaintiff stating explicitly the language on which it relies as conferring rights, such ambiguous allegations will be disregarded.

But why refer to these so-called acts of recognition in any detail? There is one decisive answer to all of them, one fact that deprives each and every one of them of *any* force whatsoever. They are swept aside by the simple statement, that even if the Common Council and every officer of Detroit had united in one express act or ordinance explicitly conferring upon plaintiff the rights which it would now have raised by implication or which it would have the Court infer from such ambiguous and indefinite conduct and resolutions, it would have been *utterly void* and of no effect.

The reason is that the *Constitution of Michigan* adopted in 1908 provides:

> "Nor shall any city or village * * * grant any public utility franchise which is not subject to revocation at the will of the city or village unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city * * *." Article 8, Section 25, Constitution of 1908.

The City authorities having no power to grant directly rights in the streets except those revocable at will, cannot do so by indirection. Having no power to grant the same by express act, none such may be implied.

Eaton vs. Shiawassee Co., 218 Fed. 588.
Litchfield vs. Ballow, 114 U. S. 190, 193.
Hedger vs. Drdon Co., 150 U. S. 182.
Niles Water Works vs. Niles, 59 Mich. 311.

Detroit vs. Robinson, 38 Mich. 108.
Spitzer vs. Blanchard, 82 Mich. 246, 248.
McCurdy vs. Shiawassee Co., 154 Mich. 550.

In *Litchfield vs. Ballow, supra*, Mr. Justice Miller on this point said:

> "If this provision is worth anything it is as effectual against the implied as the epxressed promise and is as binding in a court of chancery as a court of law."

In *Spitzer vs. Blanchard, supra*, the Supreme Court of Michigan said:

> "There can be no implied liability of a village where there can be no binding expressed contract."

In *Detroit vs. Robinson, supra*, the Court said:

> "The City cannot be held liable for work done for its benefit as upon an implied contract, for the law will not imply a promise as against the City where it could not make an express contract."

In *McCurdy vs. Shiawassee County, supra*, the Supreme Court of Michigan said:

> "All persons dealing with counties are bound to ascertain the limits of their authority fixed by statute or organic law and are chargeable with knowledge of such limits. 11 Cyc. 468 and cases cited. This Court has held that the doctrine of implied liability has no application in cases where the liability can only be created in a certain way. 56 Mich. 95."

Great numbers of authorities could be cited to support this proposition but it would seem unnecessary to extend the number.

It is alleged in plaintiff's bill that plaintiff has expended large sums on said Fort Street and Woodward Avenue, since the expiration of franchise "with the knowledge, acquiescence and either tacit or expressed approval of said City and its officials," and therefore the City having stood by and observed these expenditures, and reaped the benefits, the plaintiff has acquired permanent rights by acquiescence or estoppel (R. pp. 6, 7, 8).

But there can be no estoppel where both sides have equal knowledge of the lack of power. This rule of law and equity, which it seems is universal, does not require the citation of authorities. Nevertheless, we cite a few:

Tri-State Co. vs. City Thief River Falls, 183 Fed. 854.

State vs. Murphy, 34 L. R. A. 367.

Plumb vs. Grand Rapids, 81 Mich. 381.

MacDowell vs. Fuller, 183 Mich. 639.

Chippewa vs. Bennett, 185 Mich. 545.

It is not necessary to waste any sympathy on this plaintiff. It has made and is still making millions out of Detroit and it calculated well its chances in making such expenditures, knowing full well all about its rights under the Fort Street decisions (see the affidavit of Mr. Couzens, attached hereto).

Thus it is indisputable that the plaintiiff railway has not in Detroit, Michigan, any new term rights in our streets.

In the Denver case 246 U. S., page 178, relied on in the Court below by plaintiff's counsel, the Common Council had full power to grant rights in the streets to the water company and the Court held that it had actually,

under the terms of the grant, done so. There was no Constitutional prohibition against such action, as in this case. In the present case if the Common Council had tried to do so expressly it would have been utterly void. Certainly it could not accomplish any more in that direction when it was not trying to do anything or confer any rights than if it had explicitly undertaken to confer such rights.

Third: With reference to the claim of counsel for plaintiff that the ELECTION AND ORDINANCE WERE VOID because of:

1. Misrepresentation by City officials to the electors.

2. Misunderstanding of the proposition by the electors.

3. That an exact copy of the whole ordinance was not printed on the ballot.

It is very hard to comprehend the involved and complicated reasoning of the plaintiiff's bill on this subject. (See Record pages 11-21) and if it is not understandable that fact ought to be sufficient reason for dismissing such claim, because to over-turn an election—a decisive election on an important matter—should require very clear and explicit reasons.

It is well in the first place to note that the ordinance itself provides for just two things—first, the acquisition of the system and, second, the approval of the proposition by the electors to acquire municipal lines on those certain streets prescribed, and the voting of bonds for $15,000,000 for the project.

Nothing else is in the ordinance—and this ordinance was published as required by law.

All of the complaints of counsel for plaintiff about misrepresentations of the ordinance and of misunderstandings by electors consist of extraneous alleged facts entirely outside of the ordinance.

They alleged the Mayor, and others, represented that it was not intended to *construct* on Fort Street and Woodward Avenue, but to take over those parts of the plaintiff's lines, *by purchase,* whereas the ordinance did not so provide. And that the Mayor represented that $15,000,000 would do the work which, in fact, was not enough. These are the misrepresentations alleged (plaintiff's brief pages 6 and 7).

The ordinance itself only provides for the acquisition of a street railway on the routes described (ordinance, record pages 27-41). It says *nothing* about any purchase of plaintiff's lines on certain of those streets. But it is shown that the Mayor and other officials stated to the public, orally and in writing, that it was a part of the plan of procedure under the ordinance to purchase those two lines from the plaintiff. They lead the people to believe (say plaintiff's counsel) that the ordinance authorized that method, which was not true—hence the election must be set aside.

The learned Judge below on this point said:

> "It is urged that the voters were deceived through oral and written statements of public officials into a misunderstanding of this ordinance. It was correctly published according to law. I hold that those acts complained of were unofficial acts and that they have no more bearing upon this legal proposition than they would if said by some private citizen or one of the papers in this city.
>
> I hold that this Court cannot inquire into the things that influenced the voters, and as far as

I can go in that direction is to inquire whether or not the ballot on which this question was submitted was a proper ballot. As to the things done in the campaign by private individuals or public individuals, that is outside of the scope of proper investigation of this Court.

The form of the ballot and whether the question was submitted by a proper ballot and in a proper manner to the voters is a judicial question. It is not necessary under the law that the entire ordinance be on the ballot, but that it be fairly described and identified with the ordinance which has been published, in such a way that the public may know what it is they are voting on, and I hold that this ballot does properly submit that question to the voters of this city and did so submit it."

A reading of the ballot whose language was prescribed fully in Section 2 of the Ordinance (record page 34), shows that the proposition was fully described and with precise elaboration, and that nobody could misunderstand it. Not only so, but the ordinance was published and the proposition on the ballot might well and lawfully have been in much shorter and more compact shape, but great care was taken to make the ballot full and clear.

The authorities are explicit and uniform that all that is necessary to be put upon the ballot is a clear identification of the proposed law or ordinance to be voted upon, and sufficient to show its character and purpose.

State vs. Merritt, 10 L. R. A. (N. S.) 149.
***Kreman vs. Portland*, 57 Ore., 454.**
***Washington vs. Dency*, 4 Wash., 135.**
State vs. Longworthy, 55 Ore., 303.
***Olivers vs. Lainsville*, (Ky.), 217 S. W., 907.**

The ordinance having been published *in extenso*, according to law, the conclusive presumption of law is that the electors ascertained its terms and provisions from such published authorized text.

Jones vs. McDade (1917) 75 So., 988.

If an election is to be set aside because public speakers or newspapers make erroneous statements about the questions presented, no election in these days would stand. It is not admitted for a moment that any misstatements were made in this instance—but as a matter of law, courts have no jurisdiction, we submit, to try the question as to what statements influence voters.

The voters in this instance were quasi legislators, and no rule is better settled than the one that courts will not and cannot determine what motives or reasons influenced them in voting as they did.

New Orleans vs. Warner, 175 U. S., 120.
McCray vs. U. S. 195, 37.
People vs. Gardner, 143 Mich., 104.
Soon Hing vs. Crowley, 113 U. S., 710.
People vs. Calder, 153 Mich., 724.
People vs. Gibbs, 188 Mich., 127.

In fact the proposition and the ordinance were debated from every angle by the organs of public opinion and from scores of platforms. The points now made were made before election and the voters had before them all views of the matter. (See affidavit of Mr. Couzens, attached, pp. 35-36), and they voted nearly two to one for the proposition.

For these reasons, then, we respectfully urge the Court to CONFIRM JUDGE TUTTLE'S DECREE without further argument.

III

POINTS IN SUPPORT OF THE MOTION TO ADVANCE.

If the Court shall deny both of the foregoing motions, we respectfully pray the Court to set an early date for the hearing.

It appears that both sides to the controversy agree that an early disposition of the case is urgent.

The City's transportation problem is exigent. The citizens have agreed upon a plan for the solution of the problem, but their "old friend," the D. U. R., knows that they do not know what they want, and has started six suits to block their plan. D. U. R. representatives threatened the citizens before election with this litigation, if they had the hardihood to vote for the municipal lines, but they did so vote. The plaintiff apparently relied upon the pendency of this particular suit to discredit the bonds and render them unsaleable in the bond markets, but when plaintiff found that the bonds were actually selling to the public, in spite of all the various suits, plaintiff's representatives hurry and anticipate our motion to advance.

The City has entered upon this work as ordered by the people. Many miles of streets have been torn up, concrete laid and other work done. Contracts have been let, general manager engaged, rails and ties are being placed on the ground, one and one-half millions of bonds have been sold.

But there are thirteen other millions to be sold, and many bond buyers are timid and the pendency of this litigation does retard appreciably and does cost the City large sums in interest and the like. With this great public undertaking pending and the work proceeding and vast obligations being incurred day by day on the faith of the validity of this ordinance and election, it is of vital importance that the chief litigation about it be brought to an end speedily.

The reasons for advancing the cause seem so pressing and clear that we need not dwell further upon the subject.

Clarence E. Wilcox,
Alfred Locking,
Counsel for Appellee.

SHOWING FOR THE APPELLEE IN RESPECT TO THE MOTION OF PLAINTIFF-APPELLANT TO ADVANCE THE CAUSE OR TO GRANT AN INJUNCTION:

If the Court shall deny our motion to dismiss the appeal and also deny our motion to affirm, we then concur in asking the Court to advance the hearing.

If, for any reason, this also should be denied, we vigorously object to and protest against any stay or injunction being issued as asked by the plaintiff.

(We submit the affidavits of Messrs. Cousens and Goodwin, attached hereto, in opposition to said motion.)

The work of building this railway is going on. It is a work of the Government, approved by a vast majority of the electorate. The grounds of opposition are technical to the last degree, and there is no real showing of any harm to plaintiff's rights. Its objections are fanciful and artificial and the Courts will not allow any of plaintiff's *rights* to be impaired or taken away, even if there were the slightest disposition to do so which there is not. (See the affidavits of Messrs. Cousens and Goodwin hereto attached.)

The expenditures are now being made upon a large mileage on new streets not touched by plaintiff's lines, and it will be some considerable time before the need for possession of Fort Street and Woodward Avenue. When that time comes the City must apply for a writ of assistance to the Court under the Fort Street decree (record page 43), whereupon any and all of plaintiff's rights will be protected. In the meantime the suit in the State Court to declare the rights of the parties in Woodward Avenue, is pending in the Supreme Court of Michigan.

No harm can come to plaintiff's interests by leaving things just as they are, while great damage to defendant City and its interests would arise from an injunction.

Clarence E. Wilcox,
Alfred Lucking,
Counsel for Appellee.

Affidavit of James Couzens

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

DETROIT UNITED RAILWAY,
Plaintiff in Error,
vs.
CITY OF DETROIT,
a municipal corporation,
JAMES COUZENS, Mayor,
WM. P. BRADLEY,
FRED W. CASTATOR,
JOHN C. KRONK,
SHERMAN LITTLEFIELD,
JOHN C. LODGE,
JOHN C. NAGEL,
DAVID W. SIMONS and
JAMES VERNOR,
Members of the Common Council,
Defendants.

October Term 1920
No. 492.

Eastern District of Michigan, ss.

JAMES COUZENS, of the City of Detroit, County of Wayne and State of Michigan, being duly sworn, deposes and says that he is Mayor of the City of Detroit and one of the defendants in this case; that he was formerly a member of and president of the Board of Street Railway Commissioners of the City of Detroit and is familiar with the matters herein referred to.

Deponent states that following the decision in the Fort Street Decree affirming the right of the city of Detroit to require the Detroit United Railway to vacate

the streets and public places occupied by the Fort Street system of plaintiff upon notice from the City of Detroit so to do, (229 U. S. 39), a policy was inaugurated between the City of Detroit and the Detroit United Railway under so-called Day-to-Day agreements by which temporary permission was granted to the Detroit United Railway to construct street railway tracks upon certain streets designated in said day-to-day agreements referred to in the Bill of Complaint herein; that each of said agreements contained the following provisions:

> "BE IT FURTHER UNDERSTOOD AND AGREED between the said City of Detroit and Common Council and said Railway Company that the making of this grant and the acceptance thereof by the said company shall not be deemed a waiver of any of the rights of the City of Detroit or of the Detroit United Railway with respect to the construction, maintenance and operation of said lines of railway or street railway tracks now owned, maintained and operated in said City and each party hereto saves and reserves all its rights whatever they may be the same as though this grant had not been made and accepted."
>
> "BE IT FURTHER RESOLVED that it is further understood that the said Detroit United Railway by its acceptance hereof gains no term rights in said street or avenue by reason of the installation of the equipment herein permitted and the Common Council or the people of the City of Detroit at their pleasure or caprice may revoke the permit hereby granted and said company will forthwith remove from the streets the property permitted to be placed therein by it under this grant."

Deponent further states that in the day-to-day agreement of August 7, 1913, referred to in the Bill of Complaint herein, it was provided as follows:

> "7. It is further understood that no existing rights of either the City of Detroit or the Detroit United Railway shall be impaired or affected in any wise by this temporary agreement except as herein explicitly stated and that it is a day-to-day agreement only."
>
> "And further, be it resolved, that while this resolution shall be in force, the enforcement of the decree in the case of City of Detroit against Detroit United Railway, No. 37,446, in the Circuit Court for the County of Wayne, in Chancery, known as the Fort Street Rental Case shall be suspended and immediately after repealing of this resolution the present existing status as to such decree shall be restored, and the city may at once enforce the terms of said decree, the same as if this resolution were not passed, and when this resolution takes effect, an order shall simultaneously be entered in said cause by consent of parties to the above effect."

Deponent further states that at the election of April 5th, 1920, the Street Railway proposition received the following vote:

Yes	88,585
No	50,776
Total	139,776

AVERAGE IN FAVOR, 63.6%

Deponent further states that no resolution or proceeding has been passed by the Common Council of the City of Detroit modifying or changing the status as herein outlined.

Deponent further states that he is a member of the Board of Sinking Fund Commissioners of the City of Detroit and that the following sales have been made of public utility bonds of the $15,000,000.00 authorized by the electors on April 5th, 1920:

April 20th, 1920	$ 100,000.00	City Treasurer
June 15th, 1920	200,000.00	Sinking Fund Commission
August 10th, 1920	700,000.00	Sinking Fund Commission
August 10th, 1920	750,000.00	Sinking Fund Commission
Total	$1,750,000.00	

and that of said $1,750,000.00 so sold, bonds in the total sum of $1,564,100.00 have been resold to the public.

Deponent further avers that the following suits have been instituted by the parties and for the purposes indicated and have been disposed of as hereinafter shown:

1. April 10, 1920. *Detroit United Railway vs. City of Detroit, et al.*, in the United States District Court for Eastern District of Michigan, In Equity. Suit to restrain any proceedings or sale of bonds under said election of April 5, 1920. Suit dismissed

on motion of defendants for lack of equity. Appeal taken to this Court. (Present suit.)

2. April 10, 1920. *New York Trust Co. vs. City of Detroit, et al.,* in the United States District Court for Eastern District of Michigan, In Equity. Suit to restrain any proceedings or sale of bonds under said election of April 5, 1920, on same grounds as present suit. Plaintiff mortgagee of property in Fort Street System. Suit dismissed on motion of defendants for lack of equity.

3. April 30th, 1920. *Ellworth J. Burdick vs. City of Detroit.* Quo warranto in Wayne Circuit Court to have election of April 5th, 1920, set aside on grounds that the ballots used were on thin paper and that the printing of the spaces where the voters choice was indicated could result in exposure of ballot. (Pending.) Plaintiff is Assistant General Manager of Detroit United Railway.

4. May 10th, 1920. *Detroit United Railway, et al., vs City of Detroit, et al.,* in United States District Court, Eastern District of Michigan to have purchase of $100,000.00 Public Utility Bonds and $200,000.00, purchase of Public Utility Bonds restrained on the ground that the Sinking Fund Commission had no power to purchase same; also to restrain construction of tracks by City on Harper Avenue. (Pending.)

5. May 12th, 1920. *Detroit United Railway vs. City of Detroit, et al.,* in Wayne Circuit Court, In Chancery, to restrain purchase of $100,000.00 Public Utility Bonds by City Treasurer on the ground that the Treasurer had no power to purchase; to restrain construction work under Charlevoix Avenue contract and to have election

declared void. Bill dismissed after full hearing, as without merit.

6. August 11th, 1920. *Detroit United Railway vs. City of Detroit, et al.,* in Wayne Circuit Court to have election of April 5th, 1920, declared void; all contracts made for construction work declared void; bond sales of $100,000.00, $200,000.00, $700,000.00 and $750,000.00 to Board of Sinking Fund Commissioners declared void because said Commissioners had no power to purchase same, and to restrain the City from reselling said bonds or using proceeds therefrom and to restrain contractors from working. Case dismissed on merits after full hearing. (Appeal pending to Michigan Supreme Court.)

7. September 9th, 1920. Suit by residents of *Clairmount Avenue vs. City of Detroit, et al.,* in Wayne Circuit Court to restrain construction of lines on Clairmount Avenue because a residential street; to have vote of April 5th, 1920, declared void; to have bond sales of $1,750,000.00 declared void and to restrain City from use of proceeds. Two weeks trial concluded. (Decision pending). Mr. Bernard F. Weadock, fomerly of the Detroit United Railway legal staff, appears as attorney for plaintiff.

8. September 11th, 1920. Suit by residents of *Eliot Avenue vs. City of Detroit, et al.,* Wayne Circuit Court to have lines on Eliot Avenue enjoined on similar grounds. (Pending.) Donnelly, Hally, Lyster and Munro (Attorneys for the Detroit United Railway, appear as attorneys for plaintiff.

Deponent further avers that no injunction or restraining orders have been issued in any of said cases.

Deponent further avers that all of said suits are trivial in character and a part of a series of vexatious law-suits which plaintiff publicly stated they would harass and embarass the public authorities with if municipal ownership and operation was attempted and that such suits would result in the City being unable to sell its bonds or obtain contracts for construction of said system.

Deponent further avers that the Detroit United Railway has been for many years last past and is now paying quarterly dividends of 2% (8% per annum), and that, in addition to said dividends, its profits from the operation of its lines in the City of Detroit have been sufficient to practically construct and acquire an interurban system of great value as well as lines constructed under day-to-day agreements and the creation of a large surplus; that the officials of the City of Detroit have not pursued a destructive policy to said Company, but in spite of the very poor service rendered the public has suffered the Company to charge the following rates of fare contrary to the rights of the Company. (1) The abrogation of the 7 tickets for 25c in 1917 and the collection of a straight 5c fare. (2) In 1919 an increase from 8 tickets for 25c on franchise lines to a straight 5c fare. (3) The creation of a board of arbitration in 1919 to decide what, if any, additional increase in fares the company might be equitably entitled to, followed by the refusal of the Company to submit to arbitration upon the completion of the audit of the Company's finances. (4) In June, 1920, an increase in its fare from 5c to 6c or 9 tickets for 50c, all of which changes were made under such circumstances as not to prejudice the rights of the City or to give term rights to the plaintiff.

Deponent further avers that between January 27th, 1920 (the date the municipal ownership ordinance was passed) and April 5th, 1920 (the date of the election), the question of the adoption or rejection of said proposition of municipal ownership was very fully presented to the electorate in approximately 350 debates and public addresses to thousands of voters by both sides of the controversy; that a brief summary of the publicity in newspaper editorials and articles is as follows:

In four English daily newspapers the editorial and news items totalled 150 full pages of reading matter.

In thirty neighborhood and class publications same totalled 90 full pages.

In fraternal and club periodicals same totalled 60 full pages.

TOTAL. These, with miscellaneous matters, totaled 536 full pages of editorial and advertising comment upon the municipal ordinance from January 27th, 1920, to April 5th, 1920, both for and against the plan.

The municipal ordinance was discussed in the Electric Railway Service (published by the Detroit United Railway) weekly with an estimated circulation of 200,000 copies weekly.

More than 26 pieces of literature, each representing many pages and discussing every phase of the plan (both for and against it) were circulated throughout the city by mail, door-to-door and on the streets.

Every other known method of appeal, including button, vaudeville quartettes and general advertising was indulged in by the opponents of the plan.

Motion picture films of plan by both opponents

and proponets in all motion picture houses with an estimated attendance of 350,000 persons.

Detroit United Railway inserted 152 columns of paid advertising in English daily newspapers.

Citizens' Anti-Municipal Ownership Committee inserted 301 columns of paid advertising in the English dailies.

In weekly and neighborhood publications the Detroit United Railway and Citizens' Committee published 180 full pages of paid advertising.

Deponent further states that plaintiff caused to be published during the campaign the following information relative to the proposed plan and that the substance of the legal opinion therein expressed was widely quoted in the advertising plan against said plan for several weeks prior to April 5th, 1920:

CAR PLAN VOID 3 LAWYERS SAY.

Failure to Include Contract for Purchase Declared to Violate Charter.

Henry C. Walters and Former Judges Angell and Hally Concur in Opinion.

Three of Detroit's best known attorneys concurred Thursday in the opinion that the Couzens' plan ordinance violates the charter in purporting to provide for the purchase of certain D. U. R. lines when no contract for the purchase is submitted as part of the measure.

The three attorneys who expressed this opinion are Henry C. Walters, President of the Detroit Bar association; Former Judge Alexis C. Angell, and Former Judge P. J. M. Hally.

Ordinance Held Lacking.

Mr. Hally, when asked what effect the clause requiring the approval of three-fifths of the electors would have on the ordinance replied:

"The ordinance to be submitted to the electors April 5 does not provide for the condemnation or purchase of any part of the existing street railway. Before the city can condemn or purchase all or any part of the existing street railway the people must approve of the condemnation or purchase proposition, as provided in Sections 7 and 8 of Chapter 13 of the charter.

"This ordinance proposes to have as part of the municipal plan certain of the lines constructed under the 'day-to-day' agreement. There is, however, nothing in the ordinance authorizing a purchase of from any other mentioned in it, and there is nothing in the ordinance to distinguish these lines, nor is there anything in the ordinance from which the terms of purchase can be inferred—a proposition would necessarily include the terms of sale. These are the things on which the people must pass to make the sale valid.

Purchase Not Provided For.

"Every day-to-day agreement contains the following language: 'If the city of Detroit shall be lawfully authorized to engage in the ownership and operation of street railways, and shall desire to operate part of its system over this street, it shall purchase the tracks and the equipment constructed under this consent.' This is a contract between the railway company and the city. Now, the ordinance in question, in so far as it mentions

streets covered by the day-to-day agreement shows its desire to operate part of its system over said streets, and, in consequence, under the contract the city must purchase these properties from the railway company. As has been pointed out, the ordinance does not provide for this.

"Now the question arises: 'Is the ordinance, in so far as it attempts to take possession of these day-to-day agreement streets, without agreeing to purchase them, a law which impairs the obligation of a contract? In so far as these streets are a necessary part of the proposed plan, is it possible to proceed at all?

"In other words, if a necessary part of any plan which must be authorized by a popular vote is not legally provided for, can any part of the plan be carried out?"

Attorney Walters Concurs.

Attorney Henry C. Walters, when asked if, in his opinion, the section of the charter providing for approval by a three-fifths vote of any proposition to purchase or lease existing street railway property did not operate in carrying out the Couzens plan, replied:

"Yes, I think it would, so far as the purchase phase of the plan is concerned, because the section referred to clearly provides that an actual contract, or tentative contract, to purchase must be submitted to and have the approval of three-fifths of the electors voting on it at any regular or special election."

Former Judge Angell, after reading the ordinance and the charter provisions governing the street railway commission, said he agreed with Mr. Walters and Mr. Hally.

"In its present form the ordinance makes no distinction between the lines to be constructed and those to be acquired," Mr. Angell said.

Charter Provision Plain.

"The charter expressly provides how each line of procedure shall be carried out, and it is very clear that any plan to purchase must include a contract between the city and the railway company, in which the terms of the purchase are set forth, for it is clear that the charter intends that these terms shall be approved by the three-fifths majority to be binding.

"If the ordinance had been drawn with this in mind the lines to be built would have been separated from those to be purchased, and the terms of purchase of the latter would have been set forth."

According to the ordinance the lines which would be taken over if the ordinance was approved and found operative would be approximately half of what are called the "Class A" lines; that is, the nucleus of the municipal system.

If the ordinance does not cover the purchasing of these lines, the mayor's system will be deprived of its most essential routes, which would leave the 100 miles of new track, if built, merely a series of stub-ends and short sections of track impossible of operation as a system.

Deponent further avers that on August 9th, 1918, the Common Council of the City of Detroit adopted a resolu-

tion terminating the right of the Detroit United Railway to occupy any streets where their franchises had expired or of operating their cars thereon and instructing the Legal Department of the City to institute ouster proceedings in the Wayne Circuit Court for the purpose of securing a decree of ouster in accordance with the decision in the Fort Street Decree; that the streets so designated were Woodward Avenue from the Detroit River to Pallister Avenue; Michigan Avenue; Grand River Avenue; Gratiot Avenue: Congress and Baker Streets; Cass Avenue and Third Avenue; Trumbull Avenue; Atwater Street; Brush and Russell Streets; Chene Street; Jefferson Avenue and Mack Avenue; that said suit was filed by the City of Detroit against the Detroit United Railway on August 27th, 1918, and answer filed admitting the expiration of the franchises; subsequently on or about June 1st, 1920, defendant made a motion to dismiss said suit on the ground that (1) the Council was without power under the Charter to exercise control over the use of the streets of the City; (2) that authority to institute said suit should have been by ordinance instead of by resolution; (3) that the resolution if valid, was repealed by the passage of the Kronk Ordinance. Deponent further avers that said motion to dismiss was denied by the Court from which order defendant has appealed to the Michigan Supreme Court.

Deponent further avers that the City of Detroit is now actually engaged in the construction and the purchasing of all supplies and equipment required for thirty miles of street railway tracks urgently needed and that the plaintiff in the last ten years has not constructed within the City of Detroit in excess of fifty miles of single

tracks, whereas the City needs and has needed for years nearly two hundred miles of additional trackage.

PURTHER DEPONENT SAYETH NOT.

James Couzens.

Subscribed and sworn to before me this 14th *day of October, A. D.,* 1920.

J. R. Walsh,
Notary Public, Wayne County, Michigan.

My commission expires July 10, 1921.

Affidavit of Joseph Goodwin

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

DETROIT UNITED RAILWAY,
Plaintiff in Error,
vs.
CITY OF DETROIT,
a municipal corporation,
JAMES COUZENS, Mayor,
WM. P. BRADLEY,
FRED W. CASTATOR,
JOHN C. KRONK,
SHERMAN LITTLEFIELD,
JOHN C. LODGE,
JOHN C. NAGEL,
DAVID W. SIMONS and
JAMES VERNOR,
Members of the Common Council,
Defendants.

October Term 1920.
No. 482.

Eastern District of Michigan. ss.

JOSEPH S. GOODWIN, being duly sworn, deposes and says that he is a resident of the City of Detroit, County of Wayne, State of Michigan, and that he is General Manager of the Municipal Street Railway System of the City of Detroit.

Deponent avers that since the municipal street railway election of April 5th, 1920, the City of Detroit by and through its Board of Street Railway Commissioners has duly entered into the following contracts for street rail-

way construction and that the status of construction work on each contract is as indicated, to-wit:

(1). *May* 12th, 1920. Contract with J. A. Mercier for excavation and concrete foundation work for double track on Charlevoix Avenue east of Conners' Road. Contract completed. 3223 feet of double track laid. Tracks surfaced.

Length: 1.3 Miles Double tracks.

Contract price, $51,446.40.

(2). *July* 6th, 1920. Contract with Thomas E. Currie for excavation and concrete foundation for double track on Charlevoix Avenue, between Connors Avenue and Detroit Terminal. Work completed except small sections at Connors' Creek Bridge and Detroit Terminal crossing. Tracks laid. Paving in progress.

Length: 0.31 mile double tracks.

Contract price, $14,633.40.

(3) *July* 6th, 1920. Contract with Lennane Bros. for excavation and concrete foundation on Harper Avenue south track between Van Dyke and Gratiot Junction. Completed. Ties and rails are now laid and pavement completed.

Length: 0.74 Miles single track.

Contract price, $19,268.00.

(4) *July* 19th, 1920. Contract with J. A. Mercier for double track street railway on Montclair, Shoemaker and St. Jean Avenues. Excavation and foundation practically completed. 2100 feet of double track laid.

Length: (about) 2½ miles double tracks.

Contract price, $164,730.00.

(5) *July* 19th, 1920. Contract with J. A. Mercier for double track street railway bed on Charlevoix-Buchanan Cross-town. 17,400 feet of

double track roadbed excavated. 10,832 feet concreted. 1,600 feet of track laid.

Double track about 8.08 miles.

Single track about 1.28 miles.

Contract price, $605,531.00.

(6) *July* 23rd, 1920. STEEL RAILS (Lorain Steel Company)	4150 gross ton with accessories contracted for. Contract price, $553,392.50. 2648 ton of rail received and unloaded; 310 tons in transit.
(7) *July* 20th, 1920. TIES.	55,000 wood ties, @ 2.74. 1,845 received; 6,122 in transit. Contract price, $150,700.00.

(8) Miscellaneous contracts for steel poles ($151,850.00).

8800 Steel ties ($73,480.00) of which 5000 have been received, and general supplies ($65,000.00).

(9) Six concrete mixers, $43,731.00; four delivered, two to be delivered.

(10) 40,000 barrels of cement ordered, $108,400.

Total Contract, $2,002,162.85

Total payments, 457,390.74

Deponent further states that there are upward of seven miles of important streets in the City of Detroit that are now excavated by reason of said construction work and that if said work be enjoined it will be impossible to put the streets in such condition that traffic could use same; that the building season ordinarily stops on or about November 15th, due to cold weather conditions, and it is the expectation of the Street Railway Commission to complete the excavation and concrete foundation work and installation of ties and rails therein so as

to have said streets completed by said date; that said contracts for construction and supplies are sufficient to provide a street railway system of approximately 30 single track miles as the original unit of the system voted for April 5th, 1920.

J. S. Goodwin,

SUBSCRIBED and SWORN to before me this 15th *day of October A. D.,* 1920.

J. R. Walsh,

Notary Public, Wayne County, Michigan.

My commission expires July 10, 1920.